

protection. Claims 1 and 32 are in independent form. Favorable reconsideration is requested.

Page 4 of the Office Action states that Claims 32, 37-40, and (41-44)/(37-40) are allowed. The Examiner is sincerely thanked for that indication. The Office Action Summary indicates that Claims 1-5 and 10-22 also are allowed, although, as discussed further below, the body of the Office Action does not indicate such explicitly.

Claims 33-35 and (41-44)/(33-35) have been objected to under 37 C.F.R. 1.75(C), as being in improper dependent form for the reason set forth in paragraph 2 of the Office Action, and Claims 33-36 and (41-44)/(33-36) have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite, apparently for the same reason (see paragraph 3 of the Office Action). In particular, the Office Action asserts that “[s]ince claim 32 recites that the second layer is directly formed on the substrate, claim 33 can't recite the second layer being formed on the first layer.”

Without conceding the propriety of the foregoing objection and rejection, Claim 32 has been amended to even further clarify the claimed subject matter, as deemed necessary to overcome the mentioned objection and rejection. In particular, Claim 32 has been amended to recite that the second layer is formed directly *or indirectly* on the substrate. The recitations of Claim 33 are believed to be non-contradictory with that subject matter. Accordingly, it is believed that the objection and rejection set forth in the Office Action have been overcome, and their withdrawal is therefore respectfully requested. Claims 33-36 and (41-44)/(33-36) are believed in condition for allowance.

The other claims presently pending in this application are each dependent from independent Claim 1 or 32, and are believed allowable, at least for the reason that each claim depends from an allowable base claim.

Applicants note that added Claims 45-48 correspond in many respects to previously canceled Claims 6-9, respectively, of Species II of Group I, and thus are believed to read on Species II of Group I. Added Claims 49-58 correspond in many respects to Claims 10/(6-9)/1, 11(6-9)/1, 12/(6-9)/1, 13/(6-9)/1, 14/11/(6-9)/1, 15/12/(6-9)/1, 16/13/(6-9)/1, 17/11/(6-9)/1, 18/12/(6-9)/1, and 19/13/(6-9)/1, respectively, and thus also are believed to read on Species II of Group I. Added Claims 59-61 correspond in many respects to Claims 20/14/11/(6-9)/1, 21/15/12/(6-9)/1, and 22/16/13/(6-9)/1, respectively, and are believed to read on Group I.<sup>1</sup>

This Amendment After Final Rejection is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under 37 C.F.R. § 1.116. At the very least, it is believed that the formal objection and rejection have been overcome. In any event, however, entry of this Amendment After Final Rejection, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, he is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

---

1/ With respect to the added claims which read on Species II of Group I, Applicants respectfully request that those claims be considered by the Examiner, since Claim 1, from which those added claims depend, is generic (see the Office Action of October 23, 2001) and apparently has been allowed. (See 37 C.F.R. 1.141).

**REQUEST FOR CONSIDERATION OF PREVIOUSLY CITED ART**

As pointed out in the Amendment filed on May 14, 2002, Applicants have received an initialed Form PTO 1449 confirming that the Examiner considered and made of record all of the art cited in the Information Disclosure Statement filed on May 11, 2000, except for U.S. Patent 4,954,744 cited therein, which was not initialed by the Examiner.<sup>2</sup> Applicants again respectfully request that the Examiner consider that patent, if he has not done so already, and also request that the Examiner issue a written confirmation for the record confirming that U.S. Patent 4,954,744 has been considered and made of record in this application. If the Examiner needs an additional copy of that patent, such will gladly be supplied upon request.

**REQUEST FOR RECONSIDERATION  
OF IMPROPER FINALITY OF OFFICE ACTION**

Applicants respectfully submit that the finality of the outstanding Office Action is improper and should be withdrawn, for the following reasons. MPEP § 706.07(a) explicitly mandates that only second or subsequent actions *on the merits* shall be made final.

In the outstanding Office Action, Claims 1-5 and 10-22 were not treated on the merits.

Indeed, while page 2 of the Office Action refers to an "action on [the] merits including claims 1-5 [and] 10-22", and the Office Action Summary indicates that Claims 1-5 and 1-22 are allowed, the body of the Office Action does *not* include an actual discussion which

---

2/ A copy of the mentioned Form PTO 1449 was forwarded to the Patent and Trademark Office with the Amendment filed on May 14, 2002.

treats those claims on the merits.<sup>3</sup> Since those claims were not treated on the merits in the  
Office Action, and only the first Office Action dated February 14, 2002 actually treated  
those claims on the merits, the finality of the second Office Action dated August 13, 2002 is  
believed to be improper under MPEP § 706.07(a), and therefore should be withdrawn.

CONDITIONAL PETITION

If, after considering the foregoing two sub-sections of the Remarks, the Examiner does not agree to consider the above-mentioned previously cited U.S. Patent 4,954,744, and/or is not persuaded to remove the "Final" status of the Office Action of August 13, 2002, this paper should be treated as a petition to invoke the supervisory authority of the Director, and requests reconsideration of the Examiner's positions with regard to those issues, and should be forwarded with the filewrapper to the appropriate Patent and Trademark Office Official for decision thereon. It is believed that no fee is required in connection with this petition, since the mentioned previously cited art was timely submitted to the Patent and Trademark Office in accordance with 37 C.F.R. 1.97(b)(3), and the "Final" status of the Office Action is seen to be a result from an apparent Patent and Trademark Office error. However, if a fee is required, please charge any such fee to Deposit Account 06-1205.

---

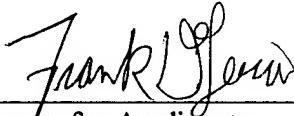
3/ It also is noted that the last two lines of page 2 of the Office Action fail to mention Claims 43 and 44 as being treated on the merits, even though they actually *are* treated on the merits on pages 3 and 4 of the Office Action.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Applicants  
Registration No. 42496

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200  
305918v2



Application No. 09/440,535  
Attorney Docket No. 03500.014023

VERSION WITH MARKINGS TO SHOW CHANGES MADE TO CLAIM 32

32. (Amended) A substrate structure which is a precursor to an electron source, and on which an electron emission device of the electron source is to be disposed, the electron emission device including at least a conductive film, said substrate structure comprising:

a substrate;

a first layer containing SiO<sub>2</sub> as a main component formed directly or indirectly on said substrate; and

a second layer containing electron conductive oxide formed directly or indirectly on said substrate.

NY\_MAIN 305918v2